IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 4TH JUNE 2007 / 14TH JYAISHTA 1929

Crl.MC.No. 1730 of 2007()

CRMP.1943/2007 of JUDL.MAGISTRATE OF FIRST CLASS COURT-I, PATHANAMTHITTA

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PETITIONER:

BABY, S/O.CHACKO GEORGE, ALUNILKKUM
PADINJATTETHIL HOUSE, PENNUKKARA
VADAKKUM MURI, ALA VILLAGE, CHENGANNUR.

BY ADV. SRI.P.HARIDAS

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. SUB INSPECTOR OF POLICE, ARNAMULA.

BY P.P. SRI.GIKKU JACOB.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 04/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 1730 OF 2007

Dated this the 4th day of June, 2007

ORDER

The petitioner is the owner of a vehicle which is allegedly involved in an alleged offence of illegal transportation of sand and the one punishable under Sec.308 of the IPC. The petitioner is an accused in the crime, though there is no allegation that he was personally present at the scene of the crime. The learned Magistrate directed the release of the vehicle to the petitioner subject to conditions. The short grievance of the petitioner is that the condition imposed that the petitioner must produce bank guarantee of Rs.1 lakh is too onerous and unjustified. The learned Magistrate appears to have imposed such an onerous condition solely on the basis of the impression that the said vehicle was involved in another crime of illegal transportation of sand. The learned counsel for the petitioner submits that, as a matter of fact, another

vehicle of the petitioner was involved in such crime. Statement to the effect that the same vehicle is so involved in the order is incorrect, submits the learned counsel for the petitioner.

2. Be that as it may, the learned Public Prosecutor was requested to take instructions as to why such a rigid condition must be imposed and insisted. The learned Public Prosecutor submits that State is interested only in ensuring that the vehicle will be available before the learned Magistrate as and when required. It is not invariable that a condition of production of bank guarantee should be insisted. Appropriate orders may, in these circumstances, be passed, it is submitted.

3. The learned counsel for the petitioner submits that the petitioner is willing to offer property as security and keep the documents in court custody to show his bona fides.

4. The petitioner can apply to the learned Magistrate not to rigidly insist on the production of bank guarantee and permit him to produce appropriate other security for release of the vehicle. The learned Magistrate must consider the same after

hearing the Prosecutor.

5. With the above observations, this Crl.M.C. is allowed to the above extent.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge